IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc. No.75643-M of 2006
Date of Decision:- 19.02.2007

Sanjay ....Petitioner(s)

through
Mr.Sukhdeep Parmar, Advocate

vs.

State of Haryana & ors. ....Respondent(s)

through
Mr.R.D.Sharma, DAG, Haryana.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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SURYA KANT, J.

The prayer in this petition is to direct the respondents to grant 'furlough' to the petitioner in terms of Sections 4 and 6 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (in short Haryana Act).

According to the respondents, the petitioner is a convict under the N.D.P.S.Act and there being a statutory embargo created by Section 32-A of the said Act, he cannot be released on 'furlough'.

Learned counsel for the petitioner, on the other hand, relies upon the judgment of the Apex Court in the case of **Dadu @ Tulsidas vs. State of Maharashtra,** 2000 (4) RCR (Criminal) 275 wherein somewhat similar question came up for consideration before the Apex Court and it was held that a convict under the N.D.P.S.Act is also entitled for 'parole'.

Under the Haryana Act, the grant of 'parole' is regulated by Section 3 whereas the release on 'furlough' is governed under Section 4 read with Section 6 of the Act. In case of release on 'parole', Section 3 (3) of the Act expressly provides that “the period on release under this Section shall not count towards the total sentence of a prisoner.”

On the other hand, as regard to period of 'furlough', Section 4 (3) of the Act provides that "subject to the provisions of clause (d) of sub-section (3) of Section 8, the period of release referred to in sub-section (1) shall count towards the total period of sentence undergone by a prisoner.

The Legislature has, thus, made a fine distinction between the two kinds of concession, namely, the 'parole' and 'furlough'. In other words, the release of a prisoner on 'furlough' shall tantamount to commutation of part of his sentence period as even without undergoing sentence during the said period, it would add towards the total period of his sentence. This being precisely in conflict with Section 32-A of the N.D.P.S.Act, is impermissible.

The *res descendi* of the Apex Court judgment in **Dadu @ Tulsidas's case** (supra), therefore, cannot be applied in case of grant of 'furlough' under the Haryana Act.

Consequently, I do not find any merit in this petition which is accordingly dismissed.

February 19, 2007 **(SURYA KANT)**
poonam **JUDGE**